

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Bruce Kneller

Application No.: 10/785,600

Confirmation No.: 3185

Filed: February 23, 2004

Art Unit: 1617

For: MODIFIED DELTA5-ANDROSTENES
HAVING IMPROVED BIOAVAILABILITY

Examiner: B. Badio

STATEMENT OF FACTS BY BRUCE KNELLER

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, Bruce Kneller of Randolph, MA, declare and state as follows:

1. I am the inventor of the subject application.
2. I began a two-year and one day period of incarceration in a correctional facility in Dedham, MA on April 23, 2007. During this period of incarceration my ability to send and receive mail is extremely limited or slowed, I have limited ability to use the telephone and no access to email.
3. An Office Action was mailed by the U.S. Patent & Trademark Office on May 3, 2007. The Office Action set a shortened statutory period of time for reply of August 3, 2007, extendable to November 3, 2007. During the time period of May 3, 2007 through November 3, 2007, Steven B. Leavitt, Registration No. 45,318, had Power of Attorney to prosecute the subject application on my behalf. Mr. Leavitt was aware of my incarceration and the related impediments to communication.
4. On October 2, 2007, I provided instructions to file a reply to the pending Office Action, including written comments with my assessment of the cited prior art and suggested claim amendments, to my mother; my mother mailed these comments to Steven Leavitt on October 9, 2007. On October 11, 2007 Mr. Leavitt emailed my mother and stated that he had received the

information to prepare a reply to the Office Action and would be able to prepare a reply ahead of the final deadline. On October 31, 2007, my mother attempted to contact Mr. Leavitt by phone and email on my behalf to confirm that my patent matters were being attended to. Mr. Leavitt responded to my mother via email on October 31, 2007 and advised her that he had had an illness in the family which had prevented him from attending to a number of things on the timeline he had promised, and that he would contact her by phone. My mother spoke with Mr. Leavitt on November 16, 2007, and he again promised to have a number of items related to my patent and trademark portfolio completed in short order. Mr. Leavitt did not advise my mother that a reply had not been filed in the subject application.

5. On November 21, 2007, when Mr. Leavitt had failed to provide drafts of several items he had promised and had stopped responding to my mother's inquiries regarding the status of my patent matters, my mother advised him that I would be retaining new patent counsel.

6. I obtained a recommendation for new patent counsel at a law firm in Boston and met with him on December 27, 2007; several days later he advised me that his firm had a conflict of interest and was unable to represent me. I subsequently engaged Morse, Barnes-Brown & Pendleton, P.C., as my counsel on January 30, 2008.

7. Lisa Treannie of Morse, Barnes-Brown & Pendleton immediately undertook a review of my patent and trademark matters. She contacted Steven Leavitt by telephone and email to advise him of the change in representation and to request that he transfer all files for my patent and trademark matters to her care immediately. No files were forthcoming. During her review of the publicly available documents relating to my patent matters, Ms. Treannie determined that the subject application had been deemed abandoned for failure to file a reply to the Office Action dated May 3, 2007. I was unaware that the subject application had been deemed abandoned until Ms. Treannie so advised me.

8. On February 12, 2008, Ms. Treannie sent Mr. Leavitt a letter via email and certified mail again requesting transfer of my files and directing his attention to his ethical obligations under state and U.S. Patent & Trademark Office rules. The certified letter was returned to Ms. Treannie by the U.S. Postal Service marked "Box closed, unable to forward," and no response was received to the email. To date no response has been received, and Mr. Leavitt has not forwarded the files for my matters to Ms. Treannie. Thus it is unclear to me at this time whether or not Mr. Leavitt filed a reply to the Office Action dated May 3, 2007 pursuant to my instructions. According to the public record, Mr. Leavitt did not respond to the Examiner's inquiries of December 11 and December 20, 2007 regarding the status of the subject application. If a reply was filed, it is apparently not of record with the U.S. Patent & Trademark Office.

9. Ms. Treannie has obtained the publicly available documents relating to my patent matters from PAIR, and proceeded to prepare the concurrently filed Amendment in consultation with me.

10. I did not intend that the subject application be abandoned for failure to respond to the outstanding Office Action. Quite the contrary, I explicitly instructed my attorney to file a reply, provided him with the necessary technical information to rebut the rejections, and relied on his assurances to my mother that my patent matters were being attended to.

10. I am in the process of filing a formal complaint with both the Massachusetts state bar and the U.S. Patent & Trademark Office regarding apparent ethical violations by Mr. Leavitt.

I further hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I acknowledge that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. §1001) and may jeopardize the validity of the subject application or any patents issuing thereon.

Bruce Kneller

Date